

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 14005, of Gene S. and Betty A. Siegel, pursuant to Paragraph 8207.11 of the Zoning Regulations, for variances from the rear yard requirements (Sub-section 5303.1) and the side yard requirements (Sub-section 5304.1) for a proposed addition to an existing structure, a retail liquor store, in a C-2-A District at premises 3700 Minnesota Avenue, N.E., (Square 5047, Lot 39).

HEARING DATE: August 10, 1983  
DECISION DATE: September 7, 1983

FINDINGS OF FACT:

1. The subject site is located on the northwest corner of the intersection of Minnesota Avenue and East Capitol Street, N.E. The site is in a C-2-A District and is known as premises 3700 Minnesota Avenue, S.E.

2. The site is irregular in shape with parallel sides on the east and west connected by irregular sides on the north and south. It is approximately diamond-shaped with two acute angles and two obtuse angles at its corners. The dimensions of the lot are 100.0 feet on the east side, 95.65 feet on the west side, and approximately 90.0 feet on the north side. On the south side, the lot line has two segments whose lengths are 63.51 feet and 24.62 feet; the segments are connected by a shallow angle and form one side for all practical purposes. The area of the lot is approximately 7,520 square feet.

3. The subject site is presently improved with a one story commercial building that occupies 2,071.0 square feet or twenty-eight percent of the lot. The six-sided building parallels the lot lines on four of its sides and utilizes ninety percent of the land which can be used in conformity with side yard and rear yard restrictions. The yards on all sides are so shaped that any addition to the building would violate the zoning requirements for minimum depth of side yards or rear yard.

4. The subject square is irregularly shaped and includes an L-shaped C-2-A strip that faces Minnesota Avenue on the east and East Capitol Street on the south. The northwest portion of the square is zoned R-5-A and is developed with medium rise apartments facing Ames Street on the north and 35th Street on the west. The subject

premises is the only business on the Minnesota Avenue side of the square. On the East Capitol Street side is the old Greenway Shopping Center which is now nearly defunct as far as retail business. It still contains a bowling alley, a dry cleaner, a carry-out, an upholstery shop and a barber shop. A police boys club is now in the former grocery store.

5. The subject square is surrounded on the north, west and south by R-5-A zoning. The C-2-A strip on the east side continues north on Minnesota Avenue and then a C-3-A strip continues further north. The area west of the commercial strip has well established medium density residential development. South and west of the subject square is a medium-rise apartment development known as Greenway Apartments.

6. The subject structure is in use as a neighborhood liquor store known as Greenway Drive-In. In addition to its primary use as a liquor store, the premises serves as a neighborhood convenience center for cashing checks, selling money orders and D.C. lottery tickets. The applicant operates the store with the assistance of four full time and four part time employees. It is open Monday through Saturday, and operates between the hours of 9:00 A.M. and 9:00 P.M.

7. The subject retail liquor business has operated at the present location for eight years and has built up a steady clientele. The premises is now overcrowded with customers waiting in lines. The people purchasing money orders and lottery tickets or cashing checks are forced to use the same counters as those purchasing liquor and thus must transact their business in full view of liquor patrons.

8. The applicant proposes to construct an addition on the south side of the subject structure. This addition would provide separate counter space for non-liquor business. The proposed structure would parallel the existing outline of the south side of the building and expand the footprint by a strip eighteen feet wide. The proposed addition would add 837 square feet to the existing 2,071.0 square feet, for a total area of 2,908.0 square feet.

9. The Zoning Regulations for the C-2-A District require a rear yard measuring fifteen feet. A side yard, if provided, must be a minimum of six feet wide. With the proposed addition, the applicant will provide a rear yard having an average depth of 10.60 feet and a side yard of 5.10 feet. The applicant seeks a rear yard variance of 4.4 feet and a side yard variance of 0.90 feet.

10. On the north side of the property, there is a fifteen foot building restriction line parallel to Ames Street, thus preventing any addition on the north.

11. There is access to the site from Minnesota Avenue on the east and from Ames Street on the north. On the Minnesota Avenue side there are two curb cuts for access to the site. The structure fronts on Minnesota Avenue and has a front yard which has been paved to provide four legal parking spaces and a fourteen foot aisle. Access from Ames Street is through a side yard that leads into the parking lot. There is a sidewalk adjacent to the front of the building for pedestrian access. The access and egress are located so that the flow of traffic will not be affected by the proposed addition on the south side.

12. The applicant presently has a dumpster at the southwest corner of his property which is accessed through his rear yard. The applicant originally proposed to move the dumpster to a location where it was accessible only by crossing the adjacent private property. After discussion with the Board, the applicant proposed to locate the dumpster on the north side of the store where it can be accessed from public rights-of-way directly onto the applicant's property. The trash removal company employed by the applicant furnishes metal dumpsters approximately six feet wide, which the company services three times a week with a truck that lifts and empties the dumpster. Receptacles for customers' trash are provided inside the store.

13. The applicant has the exterior of the property cleaned every morning. He cleans the vacant lot next door once a week. He testified that the adjoining lot belongs to the Cafritz Company but that he cleans it to control a litter problem in the square. Loiterers litter his property on a daily basis and congregate on the north side of the building. The applicant has attempted to control this problem by regularly patrolling his lot to keep the crowds moving. Subsequent to the hearing before the Board, he removed a concrete stoop from the northern exit of his building and thus deprived the loiterers of a place to sit. There are no chairs or benches on the property.

14. The applicant has been in the neighborhood since 1958. He formerly had his place of business in the Greenway Shopping Center on the south side of the subject square. The applicant is in the store at all times to provide management and to handle any neighborhood concerns in person. The applicant has many long-term customers for whom he would like to provide better service through expanded counter space in the proposed addition to his store.

15. The power of the Board to grant variances is set forth in the Zoning Act of June 20, 1938 (52 Stat. 797), as amended, as follows:

"Where, by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of

the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon an appeal relating to such property, a variance from such strict application so as to relieve such difficulties or hardship, provided such relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the zoning regulations and map."

16. The applicant argued that the irregular shape of the subject lot is a practical difficulty which makes it impossible to expand the building without an area variance.

17. The applicant argued that his concern for making his business compatible with the neighborhood was evidenced by his long-term residence there, his availability during all operating hours, and his efforts to combat loitering on or around the premises. Detrimental effects will continue to be controlled by his efforts.

18. Two neighbors testified in opposition to the application. Their concerns included loitering, littering, traffic, parking, and a bad influence on their children from the activities of the liquor store patrons who congregate on and around the premises. Specifically, they testified that patrons exit the subject store and then sit on the stoop at the north side of the store where they drink, talk, sing, argue, curse, urinate against the wall, and sleep on the lot. Such patrons also litter the vacant lot adjacent to the subject property on the northwest and then continue across the street and litter their property which is located on the north side of Ames Street, N.E. in the square adjoining the subject square. The vacant lot itself is covered with broken cars, trucks, glass and weeds growing.

19. The neighbors own single family dwellings on the northeast corner of 36th and Ames Streets, N.E. On site parking in their rear yards is accessed by a public alley parallel to 36th Street. This alley is often blocked by illegal parking which prevents the opponents from entering or exiting their property. The opponents attribute this parking problem and a heavy flow of traffic on Ames Street to the volume of patrons using the subject business. They also testified that their rear yards overlook the north side of the subject premises giving their children a full view of the activities in the vacant lot adjacent to the store.

20. The opponents also expressed a concern that a larger building for the subject liquor store would create

more of the same problems. They testified that Friday and Saturday nights were special problems but daily littering and loitering occurred from 10:00 A.M. until after closing time. Even though the lot was cleaned every morning, they observed an unacceptable amount of litter by midday. Many neighborhood residents patronize the facility and therefore the opposition has hesitated to object because they were new to the area and felt themselves to be in the minority. However, the notices of a public hearing which they received from the BZA provided them with an opportunity to meet the owner of the premises and voice their concerns to him at the hearing.

21. The applicant expressed a willingness to consult with the opposition to solve neighborhood problems because he perceives that what is good for the neighborhood is good for his business. He is aware of the problems and patrols the property daily in an effort to prevent both loitering and littering. The applicant testified that he finds his personal request more effective in dispersing loiterers than calling the police. However, he has worked with the local police over a two year period and observes an improvement in the situation. He employs a man to maintain the vacant lot on a weekly basis, although it is not his property. He reiterated that his own property is cleaned, raked, and swept every morning but if that is not sufficient, he can increase maintenance to several times a day.

22. As to the traffic issue and the blocking of alleys, the applicant testified that most of the traffic on Ames Street is from the Greenway Apartments to the south of the subject square across East Capitol Street. Greenway residents use Ames Street for access to Minnesota Avenue because the Minnesota Avenue-East Capitol Street underpass system makes direct access impossible. A traffic light at Minnesota Avenue and Ames Street causes backups on Ames Street. He further testified that the cluster of surviving stores in the old Greenway Shopping Center on the East Capitol Street side of the subject square attracts a large percentage of the loiterers and that this is a neighborhood problem not entirely related to his business.

23. The applicant agreed to submit revised plans to the record showing the locations where outside storage bins will be installed, the removal of the stoop on the north side of the subject structure, exit routes for patrons, parking layout and curb cut locations, and results of a consultation with his trash collection company on means to secure outside trash cans from theft. The requested information was received by the Board in a timely manner.

24. Advisory Neighborhood Commission 7D filed no recommendation on the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the findings of fact and the evidence of record, the Board concludes that the applicant is seeking area variances, the granting of which requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that the relief requested can be granted without substantial detriment to the public good and that it will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met this burden of proof in showing a practical difficulty inherent in the land. The diamond-shape of the subject lot when considered with the existence of a building restriction line, is an exceptional condition that under the strict application of the Zoning Regulations would result in peculiar or exceptional practical difficulties to the owner in making use of his property.


The Board further concludes that the relief requested can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and map. Open space remaining on the east and north of the structure will provide access, circulation, air and light to the subject structure. Provisions have been made by the applicant to accommodate any increase in trash or foot traffic due to the expansion by the applicant's installation of exterior trash containers and anti-loitering measures.

Accordingly, it is hereby ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

1. Construction shall be in accordance with the plans marked as Exhibit No. 7 of the record except that the facade treatment may be changed so long as the main entrance to the store faces onto Minnesota Avenue.
2. Curb cuts, parking spaces and the location of the trash containers and screening of the trash dumpster shall be as shown on Exhibit No. 16A of the record.

VOTE: 4-0 (Carrie L. Thornhill, Lindsley Williams, William F. McIntosh and Charles R. Norris to grant; Douglas J. Patton not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:   
STEVEN E. SHER  
Executive Director  
DEC 13 1983

FINAL DATE OF ORDER: \_\_\_\_\_

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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